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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Frank Gonzales, et al., Plaintiffs, vs. Phelps Dodge Miami, Inc., a Delaware corporation, et al., Defendants.	No. CV-04-903-PHX-DGC **ORDER**

Pending before the Court are Defendant Phelps Dodge Miami, Inc.'s motion for summary judgment and Plaintiffs' cross-motion for partial summary judgment regarding liability. Docs. ##48, 55. Also pending is Defendant's motion to strike Plaintiffs' reply and supplemental counter statement of undisputed facts. Doc. #61. For the reasons set forth below, the Court will grant Defendant's motion for summary judgment and deny Plaintiffs' cross-motion for partial summary judgment and Defendant's motion to strike.[1]

Background

Plaintiffs are former employees of Defendant Phelps Dodge Miami. Plaintiffs were laid off by Defendant in January 2002. Plaintiffs commenced this action by filing a breach

[1] The Court will deny the request for oral argument because the parties have submitted memoranda thoroughly discussing the law and evidence and the Court concludes that oral argument will not aid its decisional process. *See Mahon v. Credit Bur. of Placer County, Inc.*, 171 F.3d 1197, 1200 (9th Cir. 1999).

of contract claim against Defendant in state court on October 8, 2003, alleging that Defendant wrongfully denied them severance pay following their layoff. Plaintiffs filed an amended complaint on November 25, 2003. Defendant removed the action to this Court on April 29, 2004, asserting that Plaintiff's breach of contract claim was preempted by the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1001 et seq. Doc. #1. On July 8, 2004, Plaintiff filed a second amended complaint that purported to allege a breach of contract claim and alternative claims for recovery of benefits and failure to supply information under ERISA. Doc. #13. Defendant filed an answer on July 19, 2004. Doc. #14.

On December 16, 2004, the parties informed the Court that they disagreed on whether the case was an ERISA case subject to federal question jurisdiction. Doc. #23. The Court set an expedited discovery and briefing schedule with respect to this issue. Doc. #26. In an April 25, 2005 order, the Court concluded that Plaintiffs' breach contract claim sought to recover benefits promised under Defendant's ERISA-governed Severance Plan, not Defendant's Employee Handbook or the General Release Plaintiffs signed when they were laid off. Doc. #32 at 2. The Court further concluded that the breach of contract claim was preempted by ERISA and that the claim for severance benefits was subject to the exclusive remedy provisions of 29 U.S.C. § 1132(a). *Id.* at 3-4 (citing *Metro. Life Ins. Co. v. Taylor*, 481 U.S. 58, 62-63 (1987)).

At a status hearing held on May 20, 2005, the parties stated that the Court should next determine whether the Severance Plan was properly terminated. The present motions for summary judgment address this issue.

Discussion

I. The Parties' Motions for Summary Judgment.

A. Summary Judgment Standard.

Summary judgment is appropriate if the evidence, viewed in the light most favorable to the nonmoving party, "show[s] that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c); *see*

Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986). "Only disputes over facts that might affect the outcome of the suit . . . will properly preclude the entry of summary judgment." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The disputed evidence must be "such that a reasonable jury could return a verdict for the nonmoving party." *Id*. at 248. Summary judgment may be entered against a party who "fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex*, 477 U.S. at 322.

B. Analysis.

1. Plaintiffs' Second Claim for Relief: Recovery of Benefits Under ERISA – 29 U.S.C. § 1132(a)(1)(B).

Defendant's Severance Plan provides that "[t]he Severance Plan Committee . . . has the right to terminate [the] Plan when it is in the best interest of [Defendant]." Doc. #49 Ex. 1 § III(1). The Plan was terminated in its entirety on December 31, 2000, more than a year before Plaintiffs were laid off. *Id.* Ex. 14 (Am. No. 3 to Severance Plan).

Plaintiffs do not dispute that the ERISA-governed Severance Plan was terminated according to its terms. Rather, Plaintiffs state that Defendant's "reference to 'the Severance Plan' may be interpreted in different ways, and is so vague and unclear that it is likely to confuse the Court." Doc. #54 at 4. Plaintiffs contend that there are "two separate and distinct" severance plans at issue in this case: the plan that was terminated on December 31, 2000, and the plan set forth in Defendant's Employee Handbook. *Id.* Plaintiffs further contend that the Handbook was a binding agreement between the parties that required Defendant to have a severance plan in place and that the Handbook was not superseded by the ERISA-governed Severance Plan. Docs. ##56 at 5-10, 59 at 2-8.

Plaintiffs essentially are re-urging the breach of contract claim based on the language of the Employee Handbook. As the Court explained in its April 25, 2005 order, however, the Handbook does not create rights to severance benefits separate from those set forth in the ERISA-governed Severance Plan. Doc. #32 at 3. There is only one severance plan in this case: the Severance Plan governed by ERISA.

The issue the Court must decide, then, is whether the Severance Plan was properly terminated under ERISA. *See* Doc. #35. If the Plan was properly terminated, Plaintiffs have no right to severance benefits. *See Curtiss-Wright Corp. v. Schoonejongen*, 514 U.S. 73, 78 (1995) ("Employers or other plan sponsors are generally free under ERISA, for any reason at any time, to . . . terminate welfare plans. . . . Accordingly, that Curtiss-Wright amended its plan to deprive respondents of health benefits is not a cognizable complaint under ERISA[.]").

Defendant argues that the Severance Plan was properly terminated because the Severance Plan Committee had an unfettered right to terminate the Plan. Doc. #48 at 9 (citing *Curtiss-Wright*, 514 U.S. at 78); *see* Doc. #49 Exs. 1, 14. Plaintiffs assert that the Severance Plan was terminated without notice to Plaintiffs and without their consent. Doc. #56 at 4. Plaintiffs do not contend, however, that the lack of notice or consent renders the termination invalid. Nor do Plaintiffs contend that the termination was otherwise improper under ERISA. *See Curtiss-Wright*, 514 U.S. at 78; *Peralta v. Hispanic Bus., Inc.*, 419 F.3d 1064, 1070 (9th Cir. 2005) ("It is indisputable that an employer has a right to eliminate an ERISA-governed benefit plan."); *Pisciotta v. Teledyne Indus., Inc.*, 91 F.3d 1326, 1130-31 (9th Cir. 1996) (holding that the employer's reservation of right to terminate a benefit plan was effective); *Cinelli v. Sec. Pac. Corp.*, 61 F.3d 1437, 1441 (9th Cir. 1995) ("Because benefits under a welfare plan are generally neither vested nor accrued, an employer may amend or terminate benefits pursuant to the terms of the plan at any time."); *Serrato v. John Hancock Life Ins. Co.*, 31 F.3d 882, 884 (9th Cir. 1994) ("Under ERISA, 'health care benefits provided in an employee benefit plan are not vested benefits; the employer may modify or withdraw these benefits at any time, provided the changes are made in compliance with the terms of the plan.'") (alterations and citations omitted); *Joanou v. Coca-Cola Co.*, 26 F.3d 96, 98 (9th Cir. 1994) ("While employers who choose to provide a severance plan assume certain fiduciary duties in *administering* it, they remain free to unilaterally *amend* or *eliminate* such plan without considering the employees' interests.") (emphasis in original). The Court accordingly will grant Defendant's motion for summary

judgment and deny Plaintiffs' cross-motion for summary judgment with respect to the second claim for relief. *See id.*

2. Plaintiffs' Third Claim for Relief: Failure to Supply Information Under ERISA – 29 U.S.C. § 1132(c).

Plaintiffs allege in their third claim for relief that Defendant failed to supply Plan information to Plaintiffs. Doc. #13 ¶ 64. Specifically, Plaintiffs allege that Defendant ignored Plaintiffs' requests for Plan documents in April 2002 and failed to give Plaintiffs notice that the Plan had been terminated in violation of 29 U.S.C. § 1024. *Id.* ¶¶ 31, 33-38, 63-64. Plaintiffs seek a civil penalty under 29 U.S.C. § 1132(c). *Id.* ¶ 66.

Defendant argues that this claim fails as a matter of law because Plaintiffs were not Plan participants when they requested the documents. Docs. ##48 at 13, 57 at 12-14. Plaintiffs contend that this issue is not properly before the Court because the parties were instructed to limit the present motions for summary judgment to the issue of whether the Plan was properly terminated. Doc. #56 at 10. Defendant counters that further briefing is unnecessary because the undisputed evidence shows that the claim is legally insufficient.

The Court agrees. ERISA requires plan administrators to furnish copies of plan documents "upon written request of any *participant or beneficiary*[.]" 29 U.S.C. § 1024(b)(4) (emphasis added); *see Burrey v. Pac. Gas & Elec. Co.*, 159 F.3d 388, 397 (9th Cir. 1998) ("An administrator of an [ERISA] plan is required to provide copies of plan documents to 'any plan participant or beneficiary' requesting such documents.") (quoting § 1024(b)(4)); *see also* 29 U.S.C. § 1132(c)(1) (requiring a plan administrator to "comply with a request for any information which such administrator is required by this subchapter to furnish to a participant or beneficiary"). The term "participant" means any employee or former employee who is or may become eligible to receive a benefit under an ERISA plan. *See* 29 U.S.C. § 1002(7). The term "beneficiary" means a person who is or may become entitled to receive a benefit under an ERISA plan. *See* 29 U.S.C. § 1002(8).

In this case, Plaintiffs were not Plan participants or beneficiaries when they requested Plan documents in April 2002 because their rights to severance benefits ended when the Plan

was lawfully terminated on December 31, 2001. Defendant thus had no statutory obligation to comply with Plaintiffs' requests for Plan documents. *See* 29 U.S.C. §§ 1024(b)(4), 1132(c)(1). The Court will grant Defendant's motion for summary judgment with respect to the claim that Defendant failed to furnish Plan documents. *See* Doc. #13 ¶ 63.[2] As explained in the following section, this grant does not include Plaintiffs' claim for failure to notify them of the Plan's termination.

II. Defendant's Motion to Strike.

Plaintiffs argue in their reply that Defendant is not entitled to summary judgment on the third claim for relief because Defendant did not give Plaintiffs notice that the Severance Plan had been terminated. Doc. #59 at 8-9 (citing *Peralta v. Hispanic Bus., Inc.*, 419 F.3d 1064, 1072 (9th Cir. 2005)); *see* Doc. #56 at 4 n.2. Defendant argues in its motion to strike that the Court should reject this argument because Plaintiffs have not pled a claim that Defendant failed to notify them of the Plan's termination. Doc. #61 at 3-4.

The "Defendant's Breach" section of Plaintiffs' second amended complaint alleges that Defendant "unilaterally reduced the right to Severance Pay enjoyed by the Plaintiffs *without providing them notice*[.]" *Id.* ¶ 31 (emphasis added). The third claim for relief then alleges that Defendant violated 29 U.S.C. § 1024 by failing to "furnish certain additional information to . . . Plaintiffs regarding the Severance Plan." Doc. #13 ¶¶ 63-64. These allegations of a failure-to-notify claim are minimal to be sure, but the notice-pleading requirements of the Federal Rules of Civil Procedure call for only "a short and plain statement of the claim." Fed. R. Civ. P. 8(a)(2). The Court concludes that Plaintiffs have sufficiently pled a failure-to-notify claim under 29 U.S.C. § 1024. *See Porter v. Jones*, 319 F.3d 483, 494 (9th Cir. 2003) ("[A] complaint generally must satisfy only the minimal notice

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[2] The Court disagrees with Defendant's contention that Plaintiffs lacked standing to bring this claim. *See* Doc. #48 at 12-13. The Court concludes that at the time Plaintiffs filed the second amended complaint they had a colorable claim that they were participants in the Severance Plan. *See Boettcher v. Sec. of Health & Human Servs.*, 759 F.2d 719, 722 (9th Cir. 1985) ("[W]e cannot say that the challenge Boettcher raises is wholly insubstantial, immaterial, or frivolous. We find the claim colorable, but ultimately incorrect.").

pleading requirements of Rule 8(a)(2).”). The Court accordingly will deny Defendant’s motion to strike.

The Court agrees, however, with Defendant’s argument that Plaintiffs’ reliance on *Peralta* is misplaced. *See* Doc. #61 at 4. The Ninth Circuit held in *Peralta* that a plan administrator’s failure to timely notify the plaintiff of the plan’s termination violated the administrator’s fiduciary duties under 29 U.S.C. § 1104. 419 F.3d at 1073. Plaintiffs have not alleged a breach of fiduciary duty claim in this case. *See* Doc. #13; *see also Peralta*, 419 F.3d at 1071 (stating that ERISA imposes both fiduciary duties and reporting and disclosure obligations on plan administrators and that “[t]he reporting and disclosure provisions, *see* 29 U.S.C. §§ 1021-1031, are set forth separately from the fiduciary duty provisions, *see* 29 U.S.C. §§ 1101-1114”). To the extent Plaintiffs have asserted a claim for failure to notify, it is a claim only under 29 U.S.C. § 1024.

IT IS ORDERED:

1. Defendant Phelps Dodge Miami, Inc.’s motion for summary judgment (Doc. #48) is **granted**.

2. Plaintiffs’ cross-motion for summary judgment regarding liability (Doc. #55) is **denied**.

3. Defendant Phelps Dodge Miami, Inc.’s motion to strike Plaintiffs’ reply and supplemental counter statement of undisputed facts (Doc. #61) is **denied**.

4. A status conference will be held on **April 28, 2006 at 3:30 p.m.** to discuss the litigation schedule for the remainder of this case.

DATED this 14th day of April, 2006.

David G. Campbell
United States District Judge